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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/521,242	04/05/2000	Walton Sumner II	112962.201	6241

24395 7590 07/08/2003

HALE & DORR LLP
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EXAMINER

DAVIS, GEORGE B

ART UNIT

PAPER NUMBER

2121

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

HALE AND DORR LLP Wash, DC

Base Date: _____

Call Up Date: 9/8/03

Due Date: 10/8/03 Final Resp. and NOA

Final Date: 1/8/04

Ext. _____ Dktd By g/b

Office Action Summary

Application No.

09/521242

Applicant(s)

Summer II et al

Examiner

George Davis

Group Art Unit

2121

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/6/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-49 is/are pending in the application.
- Of the above claim(s) 28-33, 38-40 and 44-49 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-27, 34-37 and 41-43 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The proposed drawing correction, filed on 5/6/03 is ☐ approved ☒ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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DETAILED ACTION

Drawings

1. The drawings are objected to because 1, 3, 8-11 and 19 arrow heads should be drawn to show the input or output to each device and figures 1-18 should be labeled as prior art (see Pat. No. 6246975 and Sumner's prior art article (figure 1)). Removing device and connections from figures 10 and 11 will draw figures 10 and 11 to a new matter issues since it is consider a change in the specification and will change the status of figures 10 and 11 of being prior art figures. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 U.S.C. § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Claims 1-27, 34-37 and 41-43 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Sumner II et al, "Simulating Patients with Parallel Health State Networks", Proceedings of the American Medical Informatics Association Annual Symposium, November 1998.

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Claims 1-27, 34-37 and 41-43 are taught by Sumner II (see ABSTRACT, INTRODUCTION, METHOD, RESULTS and Figure 1).

3. The declaration under 37 CAR 1.132 filed May 6, 2003 is insufficient to overcome the rejection of claims 1-27, 34-37 and 41-43 based upon 35 U.S.C. 102 (a) rejection as set forth in this Office action because applicants fail to set forth facts that the claimed invention and the prior art do not have different inventive entity and are not distinct.

4. Applicant's arguments filed May 6, 2003 have been fully considered but they are not persuasive.

Applicants admit that the date of publication of the prior art by Sumner, II is November 1998. Therefore, the claimed invention is rejected under 35 U.S.C. 102 (a) as shown in paragraph 2 and 3 above.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Davis whose telephone number is (703) 305-3891. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anil Khatri, can be reached on (703) 305-0282. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7240.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

July 3, 2003



GEORGE B. DAVIS
PRIMARY PATENT EXAMINER